

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Andrew G. Smith,)	
)	
Complainant,)	
)	Case No. WC-2012-0189
v.)	
)	
Missouri-American Water Company,)	
)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW Respondent Missouri-American Water Company (MAWC) and for its Answer and Motion to Dismiss the Complaint of Andrew G. Smith (Complainant) states as follows:

1. *Respondent, Missouri American Water Company of 727 Craig Rd., St. Louis, MO 63141, is a public utility under the jurisdiction of the Public Service Commission of the State of Missouri.*

Answer: MAWC admits that its address is 727 Craig Road, St. Louis, Missouri 63141. MAWC admits that it is a public utility under the jurisdiction of the Public Service Commission of the State of Missouri.

2. *As the basis of the complaint, Complainant states the following facts:*

(a) *Complainant owns an eight family apartment building located at 637 Highland Park Drive in Chesterfield, Missouri.*

Answer: MAWC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2(a) and therefore denies the same.

(b) *Respondent provides water service for the said apartment building.*

Answer: MAWC admits that it provides water service to 637 Highland Park.

(c) For more than 10 years Respondent sent Complainant quarterly bills based on metered usage of water which were always paid promptly by Complainant.

Answer: MAWC has records available electronically going back six years. MAWC admits that for the past six years it has sent Complainant quarterly bills based on metered usage of water which were paid by Complainant until August 2011. Complainant still has not paid the bill that is the subject of this Complaint. Further answering, MAWC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2(c) and therefore denies the same.

(d) On August 10, 2011 in a letter from Respondent, Complainant was informed that the water meter at 637 Highland Park Drive “had stopped registering water usage” and that Respondent would add an “adjustment” to the next bill of \$1149.15.

Answer: MAWC admits that on August 10, 2011 it sent a letter to the Complainant informing him that the water meter at 637 Highland Park Drive “had stopped registering water usage.” Further answering, MAWC states that the meter at issue was replaced August 5, 2011. Further answering, MAWC states that it advised the Complainant the next bill would contain a debit adjustment of \$1149.15 for the period of Thursday, October 7, 2010 to Friday, August 5, 2011. The charge represents estimated usage for the period of time in which the Complainant’s meter failed to register actual usage. A copy of the letter from MAWC to Complainant dated August 10, 2011 is attached as Appendix A and is incorporated herein.

(e) 4CSR 240-13.025 states in part, “For all billing errors, the utility will determine from all related and available information...adjustments for the estimated period involved.

Answer: MAWC admits the cited section is quoted correctly; however, Complainant fails to quote the entire provision, thereby leaving out relevant language from the regulation. The regulation states:

For all billing errors, the utility [1] *will determine from all related and available information the probable period during which the condition existed* and [2] shall make billing adjustments for the estimated period as follows:

**

(B) In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed twelve (12) monthly billing period ... calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first.

4 CSR 240-13.025 (emphasis and numbering added). Under this provision, the utility has two separate obligations: 1) to determine from all related and available information the probable period during which the condition existed; and 2) to make billing adjustments for the estimated period as prescribed. Only the first obligation, determining the probable period during which the condition existed, takes into account “all related and available information.”

(f) *Complainant asked for a detailed explanation of the calculation of the “adjustment.”*

Answer: MAWC admits the allegations contained in paragraph 2(f). Further answering, MAWC provided an explanation by letter dated August 30, 2011. A copy of the letter from MAWC to Complainant dated August 30, 2011 is attached as Appendix B and is incorporated herein.

(g) *By letter dated August 30, 2011 the Respondent stated that the adjustment was made based on historical usage applied to a period when it claimed the meter was defective.*

Answer: MAWC admits that it sent a letter dated August 30, 2011 explaining the adjustment. *See Appendix B.*

(h) *The Respondent did not claim to have any evidence as to actual water usage during the period.*

Answer: MAWC admits the allegations contained in paragraph 2(h).

(i) The Respondent did not explain why it waited 10 months to repair a water meter that it believed was defective.

Answer: MAWC admits that it did not provide any explanation about waiting ten months to repair the water meter and further states it did not wait ten months. Further answering, MAWC states that it did not discover the meter was no longer registering water until August 5, 2011, at which time it replaced the meter, notified the Complainant of the situation and made a billing adjustment in accordance with its tariffs.

Moreover, MAWC notes that in recent history Complainant received quarterly water bills in the range of \$200 - \$500. However, MAWC has no record that Complainant inquired of, or notified, the Company in 2011 when he then received three straight quarterly bills under \$30.00, which reflected no water usage.

(j) The Respondent did not explain why it did not take climatic conditions into account.

Answer: MAWC admits the allegations contained in paragraph 2(j) and further states that MAWC's tariff does not require such an adjustment.

(k) The Respondent did not explain why it did not take apartment occupancy into account. Occupancy, in fact, was about 80% during the period of the allegedly defective water meter versus the occupancy during the historical period the Respondent used to calculate its "adjustment" 4 CSR 240-13.025 would appear to require such "related and available information" be taken into account.

Answer: MAWC admits that it did not explain why it did not take apartment occupancy into account and further states that MAWC's tariff does not require such an adjustment. Changes in occupancy for a building may or may not result in a reduction in water usage depending on factors such as the number of people in each unit and the water usage of each individual user. The regulations require "related and available information" to be taken into account to determine the probable period during which the condition existed. This qualification

does not apply to the billing adjustment, which is governed by the Company's tariffs. *See also* paragraphs 2(e) and 2(m). Further answering, MAWC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2(k) and therefore denies the same.

(l) The Respondent did not explain why it continued to charge complainant for a defective meter, why customer should pay for a defective meter or why it made no credit for the defective meter charges when it calculated its "adjustment."

Answer: MAWC denies charging Complainant for a defective meter and further denies the remaining allegations in paragraph (l). Further responding, to the extent Complainant is referring to the fixed customer charges that continued to be billed during the relevant time period, those charges cover an array of costs related to service, such as meter reading and billing. Those charges were properly charged pursuant to Respondent's tariffs.

(m) The Respondent did not provide tariffs, as requested by the Complainant, that would support the calculation of Respondent's "adjustment." In fact, the only tariffs ever supplied to Complainant were effective after the alleged dates of the defective water meter.

Answer: MAWC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2(m) and therefore denies the same. Further answering, Respondent's tariffs are publically available. Further answering, MAWC states that the relevant tariff in place at the time of the events was St. Louis County tariff sheet Rule 7 (Form No. 13, P.S.C. MO. No. 6, Sheet No. R7.0). A copy of the tariff is attached as Appendix C for Complainant's reference. With regard to adjustments related to a defective meter, this tariff stated:

[T]he Company, as a basis for adjusting the billing to the customer, will determine the quantity of water used, either by a test of the meter, by the amount of water used during a corresponding period the preceding year, or by an estimate based on the average amount of water used during the preceding twelve months

proportioned to the period during which the meter is shown to have become defective or inaccurate, at the Company's option.

3. *The Complainant has taken the following steps to present this complaint to the Respondent:*

(a) *First, Complainant attempted to contact the Respondent by phone on several occasions but was unable to reach anyone with the power to negotiate a settlement.*

Answer: MAWC admits Complainant contacted Respondent by phone. Further answering, MAWC attempted to contact Complainant by phone on multiple occasions in an attempt to address his dispute and left contact information and requests for Complainant to call back. Respondent was not successful reaching Complainant. As a result, on October 6, 2011, MAWC sent a letter advising Complainant of these unsuccessful attempts to reach him. A copy of the letter from MAWC to Complainant dated October 6, 2011 is attached as Appendix D and is incorporated by reference. Further answering, on October 13, 2011 after MAWC received a letter from Complainant dated October 5, 2011 (a copy of which Complainant attached to his Complaint), Chelsie Harmon, a MAWC employee who is responsible for responding to customer service issues and has authority to resolve customer complaints, called Complainant and left a voice mail message with contact information asking Complainant to call her back. She was unsuccessful reaching Complainant. Further answering, MAWC is without knowledge or information sufficient to form a belief as to the truth of each and every other allegation contained in paragraph 3(a) and therefore denies the same.

(b) *Then, due to out of town travel Complainant wrote a letter (copy attached) outlining his objections to the "adjustment" and proposing a settlement calculated at \$180.68. A check was enclosed for that amount.*

Answer: MAWC admits that Complainant sent a letter to MAWC enclosing a check. Further answering, MAWC is without knowledge or information sufficient to form a

belief as to the truth of each and every other allegation contained in paragraph 3(b) and therefore denies the same.

(c) Respondent cashed the check and did not then or subsequently refuse the settlement but has continued to threaten disconnection. Nor has Respondent adjusted the balance due for water usage in line with the settlement.

Answer: MAWC admits it received and cashed the check sent by the Complainant and applied it to his overdue account. Further answering, MAWC did not accept this payment as settlement of the outstanding balance on the account. Further answering, as noted above, in response to the letter, MAWC attempted to contact Complainant by telephone and left a message with contact information for him to return the call. MAWC was unsuccessful reaching Complainant.

(d) Complainant has received several written requests for payment and recorded phone message requests to call the Respondent. Complainant has returned the phone messages on several occasions but has never been successfully connected to anyone authorized to negotiate a settlement.

Answer: MAWC admits it sent several written requests for payment and left phone messages for the Complainant requesting Complainant to contact MAWC regarding his dispute. Further answering, MAWC states that Ms. Harmon reached out to Complainant to discuss his dispute, but was unsuccessful reaching Complainant. Further answering, MAWC states that the parties have not been able to agree to a resolution of this dispute, in part because all attempts to reach Complainant have been unsuccessful.

Except as expressly stated herein, MAWC denies each and every other allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

1. As its First Affirmative Defense, MAWC states that Complaint fails to state a claim upon which relief may be granted in that MAWC acted at all times in accordance with its tariffs, any charges billed to Complainant were calculated pursuant to MAWC's tariffs and there is no allegation in the Complaint of any violation of such tariffs.

WHEREFORE, Respondent Missouri-American Water Company prays that the Public Service Commission of the State of Missouri dismiss the Complaint with prejudice at Complainant's cost.

MOTION TO DISMISS

1. Complaint fails to state a claim upon which relief may be granted in that in that the allegations made by Complainant do not allege any violation of statute, rule or Commission order.

WHEREFORE, Respondent Missouri-American Water Company prays that the Public Service Commission of the State of Missouri dismiss the Complaint with prejudice at Complainant's cost.

Respectfully submitted,

MISSOURI-AMERICAN WATER COMPANY

By: /s/ Tracy D. Elzemeyer
Tracy D. Elzemeyer, MO Bar 50683
727 Craig Road
St. Louis, MO 63141
tracy.elzemeyer@amwater.com
(314) 996-2279 (telephone)
(314) 997-2451 (facsimile)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically and served either electronically or mailed postage prepaid the 3rd day of February, 2012, to:

Rachel Lewis
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Rachel.Lewis@psc.mo.gov

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Andrew G. Smith
10408 Manchester Rd, Suite 209
St. Louis, MO 63122-1523
smithagx@juno.com

Lewis Mills
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

/s/ Tracy D. Elzemeyer